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FISCAL IMPACT STATEMENT

LS 7549

BILL NUMBER: HB 1510

NOTE PREPARED: Apr 10, 2007

BILL AMENDED: Apr 10, 2007

SUBJECT: Charity Gaming.

FIRST AUTHOR: Rep. Van Haaften

FIRST SPONSOR: Sen. Merritt

BILL STATUS: 2nd Reading - 2nd House

FUNDS AFFECTED: ___ GENERAL
X DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: *Gambling Enforcement:* The bill transfers \$166,666 each month from the Build Indiana Fund to the Alcohol and Tobacco Commission's Enforcement and Administration Fund. The bill establishes the State Gambling Enforcement Fund to pay the operating expenses of the Office of the Special Prosecuting Attorney for Gambling Enforcement. The bill also transfers \$41,666 each month from the Build Indiana Fund to the State Gambling Enforcement Fund.

The bill establishes the Office of the Special Prosecuting Attorney for Gambling Enforcement. The bill permits the Special Prosecuting Attorney to prosecute certain gambling crimes: (1) if the Special Prosecuting Attorney certifies certain information about the crime to a county prosecuting attorney and the county prosecuting attorney: (A) is disqualified from investigating or bringing a criminal prosecution in the matter addressed in the certification; (B) does not file an information or seek an indictment within ninety (90) days after the date on which the special prosecuting attorney certified the information to the county prosecuting attorney; or (C) refers the case back to the special prosecuting attorney; and (2) if the Special Prosecuting Attorney finds that there is probable cause to believe that a person identified in the certification has violated a criminal statute identified in the certification.

The bill specifically lists electronic gaming devices among the gambling devices that may not be maintained in a place accessible to the public. It authorizes the revocation of a Lottery retailer's contract with the Lottery Commission, a charity gaming license, a retail merchant's certificate, a tobacco sales certificate, or an alcoholic beverage permit for certain criminal violations. The bill provides that a second unrelated conviction for professional gambling or promoting professional gambling is a Class C felony rather than a Class D felony

Charity Gaming Administration: The bill makes numerous changes to the laws concerning charity gaming licenses and the participants in charity gaming. It authorizes the Gaming Commission to issue an annual license permitting a qualified organization to sell pull tabs, punchboards, and tip boards at any time on the premises owned or leased by the qualified organization and regularly used for the activities of the qualified organization. It also authorizes an annual charity game night license. The bill specifies that state educational institutions are qualified organizations. It specifies the conditions for conducting raffles and door prize drawings applicable to a candidate's committee. It also makes certain changes concerning manufacturers and distributors of charity gaming supplies.

Effective Date: Upon passage; July 1, 2007.

Explanation of State Expenditures: *Build Indiana Fund Transfers:* The bill requires the Auditor of State to make two new monthly transfers from the Build Indiana Fund (BIF) beginning in FY 2008. Both transfers would occur subsequent to the transfer of funds to the Motor Vehicle Excise Tax Replacement Account (MVETRA) required under current statute. The transfers in the order that they are to be made are as follows:

- (1) \$166,666 per month to the Alcohol and Tobacco Commission's Enforcement and Administration Fund which exists under current statute. The annual impact of this transfer would total about \$2.0 M.
- (2) \$41,666 per month to the State Gambling Enforcement Fund established by the bill. The annual impact of this transfer would total about \$500,000.

Based on the current annual flow of revenue to the BIF and the size of the MVETRA transfer, sufficient revenue would annually be available the BIF to support both transfers.

Background Information: **BIF:** Under current statute, \$250 M in Lottery proceeds, gaming tax revenue, and pari-mutuel tax revenue is transferred to the BIF each fiscal year. Current statute requires only one transfer the BIF each year totaling \$236.2 M (\$19.68 M per month) to the Motor Vehicle Excise Tax Replacement Account. Thus, the annual excess that is available in the BIF for other expenditures is about \$13.8 M. The two new required transfers established under the bill would occur before any revenue in the BIF could be spent on state and local capital projects during the fiscal year.

Enforcement and Administration Fund: This Fund is established under current statute. The Fund is nonreverting and the money in the Fund is to be spent solely for enforcement by the ATC of the alcohol and tobacco control laws. Revenue distributed to the Fund in FY 2006 totaled approximately \$7.9 M, with the Fund have zero balance at the end of FY 2006. Under current statute, the Fund receives revenue from the following sources:

- (1) Alcoholic beverage taxes on beer (\$0.0075 per gallon); liquor (\$0.11 per gallon); and wine (\$0.04 per gallon).
- (2) Fees from permits issued to employees of retail alcohol beverage establishments and alcohol beverage retailers and dealers.
- (3) Fees from tobacco sales certificates.
- (4) Fines and penalties.

State Gambling Enforcement Fund: The bill establishes the State Gambling Enforcement Fund to be administered by the IGC. The Fund consists of monthly transfers from the Build Indiana Fund (BIF) and appropriations. The transfer from the BIF required under the bill will total about \$500,000 annually. The

Fund is nonreverting and the money in the Fund is to be spent to pay the operating expenses of the Office of the Special Prosecuting Attorney for Gambling Enforcement.

Special Prosecuting Attorney for Gambling Enforcement: The bill establishes the Office of the Special Prosecuting Attorney for Gambling Enforcement. The Special Prosecutor is appointed by, and serves at the pleasure of, the Indiana Gaming Commission (IGC). The Special Prosecuting Attorney is the Director of the Office which also is to consist of an additional staff of deputy prosecuting attorneys, investigators, auditors, and clerical employees. The bill permits the Special Prosecuting Attorney to prosecute certain gambling crimes if the Special Prosecuting Attorney satisfies (1) and (2) below.

(1) The Special Prosecuting Attorney certifies certain information about the crime to a county prosecuting attorney and the county prosecuting attorney either:

(a) is disqualified from investigating or bringing a criminal prosecution in the matter addressed in the certification;

(b) does not file any information or seek an indictment within 90 days after the date on which the Special Prosecuting Attorney certified the information to the county prosecuting attorney; or

(c) refers the case back to the Special Prosecuting Attorney.

(2) The Special Prosecuting Attorney finds that there is probable cause to believe that a person identified in the certification has violated a criminal statute identified in the certification.

The bill provides for the Special Prosecuting Attorney to receive compensation set by the IGC and approved by the State Budget Agency (SBA), but limits the compensation to the minimum paid to a full-time prosecuting attorney. The bill further provides that the Special Prosecuting Attorney, with the approval of the SBA, is to set the salary levels of the other employees of the Office. In FY 2007, the minimum compensation for a prosecuting attorney is \$149,096, with a salary component totaling \$115,282.

Penalties: The bill could potentially result in increased convictions for gambling violations and could potentially result in longer incarceration periods for these convictions. Besides establishing the Special Prosecuting Attorney to prosecute certain gambling crimes, the bill also increases the penalty for certain gambling crimes. Currently, conviction for violating the professional gambling or promotion of professional gambling statutes is a Class D felony. The bill also makes a second unrelated conviction for violation of these statutes a Class C felony. An increase in convictions of gambling crimes and longer incarceration periods could potentially affect state expenditures on DOC facilities. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The magnitude of these impacts are indeterminable.

A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. A Class C felony is punishable by a prison term ranging from 2 to 8 years, depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$22,734 in FY 2006. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$63,139. The average length of stay in DOC facilities for all Class D felony offenders is approximately ten months, and for all Class C felony offenders is approximately two years.

Charity Gaming Administration: The bill makes various changes relating to administration of charity gaming by the IGC. The cost of IGC administration and enforcement of charity gaming is paid by revenue from Charity Gaming License fees and the Charity Gaming Excise Tax. Revenue from both of these sources is deposited in the Charity Gaming Enforcement Fund. Amounts in the Fund in excess of what is needed to pay administrative costs is distributed to the Build Indiana Fund (BIF). In FY 2006, revenue to the Charity Gaming Enforcement Fund totaled about \$5.4 M. The FY 2006 transfer from the Charity Gaming Enforcement Fund to the BIF totaled about \$3.5 M. Some of the administrative changes in the bill include the following:

(1) The bill allows a member of an organization's board of directors or board of trustees to operate and work at charity gaming events conducted by the organization. The bill also allows a full-time employee of an organization who is not a member to work at charity gaming events conducted by the organization. Under current statute, organization members and members of an organization's auxiliary are allowed to operate and work at charity gaming events conducted by an organization. A non-member may work at a charity gaming event if the person is a member of another organization qualified to conduct charity gaming if approved by the IGC.

(2) The bill allows parents of students in a public school, members of a public school's parent organization, or members of a public school's alumni association to operate or work at charity gaming events conducted by a public school. This is currently allowed for nonpublic schools only. In addition, the bill allows public and nonpublic school employees, officers, and students to operate or work at charity gaming events conducted by a public or nonpublic school.

(3) The bill specifies that public colleges and universities and other state educational institutions are eligible to conduct charity gaming events.

(4) The bill changes responsibility for publishing notice of an organization's application for an annual bingo license from the IGC to the applicant organization. The bill also requires newspaper notification and specifies the number of times the notice must be published.

(5) The bill specifies reasons for which the IGC may deny a charity gaming license to an organization, or distributor's or manufacturer's licenses.

(6) The bill establishes a new annual charity game night license to allow bona fide civic and veterans organizations in existence for 10 years to conduct charity gaming nights more than one time during the year, and repeals current statute limiting an organization to four charity game nights per year. The bill provides for the IGC to issue a license that may authorize charity game nights on more than one occasion during a year. The bill also specifies information that must be included in certain license applications and annual licenses to conduct charity gaming events. It also provides for public hearing, application, and published notification requirements for organizations applying for an annual charity game night license.

(7) The bill eliminates the license exception for raffles and door prize events if the total market value of the prize or prizes does not exceed \$1,000.

(8) The bill authorizes candidate's committees to conduct a door prize drawing at a raffle event it is licensed to conduct. Under current statute, candidate's committees may obtain a raffle license.

(9) The bill provides that a bingo license or special bingo license may authorize an organization to conduct

raffle events, in addition to door prize drawings and sell pull tabs, punchboards, and tip boards at bingo events as allowed under current statute.

(10) The bill allows an organization to deduct from gross charity gaming receipts up to \$200 per day for rent paid for facilities leased for charity gaming events in determining the net proceeds of charity gaming events that may be used only for the lawful purposes of the organization. (Note: Current statute unchanged by the bill limits the number of days per week that an organization may rent a facility for charity gaming to three days.) The bill also repeals the limit on facility rent that is set under current statute at \$200 per day.

Explanation of State Revenues: The changes to the charity gaming statutes that could potentially have a revenue impact are as follows.

PPT License: The bill establishes a new annual PPT license allowing an organization to sell pull tabs, punchboards, and tip boards at any time on the premises owned or leased by the organization and regularly used for its activities. The bill specifies that this license is not required for the sale of pull tabs, punchboards, and tip boards at another charity gaming event. The practice has been that organizations obtaining an annual bingo license may use the license to only sell pull tabs, punchboards and tip boards throughout the year, even if bingo is not conducted. Under the bill, an organization would have to obtain the PPT license to conduct pull tab and other sales when other charity gaming events are not being conducted.

In FY 2005 (the latest year available), 850 annual bingo licenses were issued, with 349 of these licensees selling pull tabs but not conducting bingo. Thus, there could potentially be a significant number of organizations shifting from the annual bingo license to the PPT license. In addition, there could be organizations that ultimately would continue to obtain the annual bingo license but obtain the PPT license to sell pull tabs throughout the year. The net impact of these potential license changes on license fees is indeterminable.

Annual Charity Game Night License: The bill establishes a new annual charity game night license to allow bona fide civic and veterans organizations in existence for 10 years to conduct charity game nights more than one time during the year. Currently, the charity game night license allows the game to be conducted only on one day. The potential fiscal impact on charity gaming license fees from this new license is indeterminable.

State Educational Institutions: The bill specifies that public colleges and universities and other state educational institutions are eligible to conduct charity gaming events. The extent to which these changes will increase the pool of qualified organizations that may conduct charity gaming events is unknown. The actual impact on license fee revenue would depend upon the response by these entities, and could be reduced to the extent that any additional charity gaming conducted by state educational institutions displaces existing charity gaming operations of civic, educational, other political, religious, senior citizens, or veterans organizations.

Background Information: Current law permits a bona fide civic, educational, political, religious, senior citizens, or veterans organization to hold a charity gaming license for purposes of conducting charity gaming events. The IGC administers and enforces charity gaming. Allowable charity gaming events consist of bingo, charity game nights, raffles, door prize events, festivals, and sale of pull tabs, punchboards, and tip boards. Gross receipts from charity gaming totaled about \$526.4 M in FY 2005 (the latest year available), with net proceeds totaling about \$72.1 M. In FY 2005, 2,619 charity gaming licenses were issued to qualified organizations

Businesses that manufacture, distribute, or sell pull tabs, punchboards and tipboards to organizations within the state must obtain a manufacturer's or distributor's license. The manufacturer's license fee is \$3,000 annually, and the distributor's license fee is \$2,000 annually. In FY 2005, 16 manufacturer's licenses and 55 distributor's licenses were issued resulting in \$158,000 in revenue. In addition to the license fees, the Charity Gaming Excise Tax on pull tabs, punchboards, and tip boards is equal to 10% of the wholesale price of these devices when sold to organizations by distributors and manufacturers. The Charity Gaming Excise Tax resulted in approximately \$1.37 M in revenue during FY 2006.

License fee and excise tax revenue is deposited in the Charity Gaming Enforcement Fund to pay the charity gaming administrative costs incurred by the IGC. Revenue remaining in the Fund after payment of administrative costs is distributed quarterly to the Build Indiana Fund.

Penalties: The bill establishes the Special Prosecuting Attorney to prosecute certain gambling crimes which could potentially increase convictions for gambling violations. The bill also increases the penalty for certain gambling crimes. The maximum fine for a Class C felony and a Class D felony is \$10,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the judicial salaries fee (\$15), the public defense administration fee (\$3), the court administration fee (\$2), the judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: *Penalties:* The bill establishes the Special Prosecuting Attorney to prosecute certain gambling crimes which could potentially increase convictions for gambling violations. The bill also increases the penalty for certain gambling crimes. If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Explanation of Local Revenues: *Penalties:* The bill establishes the Special Prosecuting Attorney to prosecute certain gambling crimes which could potentially increase convictions for gambling violations. The bill also increases the penalty for certain gambling crimes. If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: Indiana Gaming Commission; Alcohol and Tobacco Commission; Department of State Revenue; Hoosier Lottery; Department of Correction.

Local Agencies Affected: County Prosecutors. Trial courts, local law enforcement agencies.

Information Sources: *Charity Gaming Annual Report, FY 2005*, Department of State Revenue. Indiana Sheriffs' Association, Department of Correction.

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